

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV-23-04901-WLH (AGRx) Date: October 15, 2024

Title Mackenzie Anne Thoma v. VXN Group, LLC., et. al.

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Present: The Honorable: Alicia G. Rosenberg, United States Magistrate Judge

K. Lozada  
Deputy Clerk

CS 10/15/2024  
Court Reporter / Recorder

Attorneys Present for Plaintiffs:  
Sarah Hannah Cohen

Attorneys Present for Defendant:  
Trey David Brown  
Brad S. Kane

**Proceedings: ORDER RE: MOTION TO OVERRULE RYAN MURPHY'S CLAIM OF  
PRIVILEGE AND COMPEL PRODUCTION OF DOCUMENTS (Dkt. No. 105)**

Case is called. Counsel state their appearances.

On September 13, 2024, Defendants VXN Group, LLC and Mike Miller filed a motion to overrule third party Ryan Murphy's claim of privilege and compel production of documents. (Dkt. No. 105.) Plaintiff filed an opposition.<sup>1</sup> (Dkt. No. 107.) Defendants filed a reply. (Dkt. Nos. 108-109.) The matter came on for hearing.

As the parties are well aware, the District Judge's Order dated May 16, 2024 limited Phase One discovery to the following "two threshold issues related to Plaintiff's individual claims":

- (i) whether Plaintiff is an independent contractor or employee; and
- (ii) whether Plaintiff falls under the professional actor exemptions of IWC Wage Order 12.

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<sup>1</sup> Plaintiff also filed evidentiary objections regarding evidence about another third party, Mr. Lerner, who apparently produced documents in response to a subpoena served upon him. (Dkt. No. 107-2.) Because the evidence regarding Mr. Lerner does not affect the disposition of Defendants' motion directed to Mr. Murphy, Plaintiff's objections are overruled.

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(Order dated May 16, 2024, Dkt. No. 66 at 8.) All other discovery matters not related to these two issues “are stayed until the Court so orders.” (*Id.*)

The discovery cut-off date for Phase One discovery was September 13, 2024, 120 days after entry of the May 16, 2024 Order. (*Id.*) Defendants filed the motion currently before the court on September 13, 2024.

The court questioned counsel at the hearing as to third party Mr. Murphy’s production of documents in response to the subpoena served upon him pursuant to Fed. R. Civ. P. 45. Based on the briefs and responses from counsel at the hearing, it appears to the court that:

- (1) Mr. Murphy has withdrawn his claim of attorney client privilege as to all items on his privilege log, and has produced the items on his privilege log in his possession, custody or control.<sup>2</sup>
- (2) Mr. Murphy is not withholding any documents responsive to Document Request No. 8.
- (3) Mr. Murphy has produced documents responsive to Document Request No. 32 (which calls for his Instagram Account) to the extent they are responsive to other document requests in the subpoena. No documents related to Phase One discovery were identified as being withheld either in briefing or in response to the court’s questions at the hearing.

The court concludes that there are no further documents for the court to compel Mr. Murphy to produce during Phase One discovery.

At the hearing, Defendants requested that Mr. Murphy be ordered to appear for a second deposition on the ground that he produced documents after his deposition was concluded. Because the discovery cut-off date set by the District Judge for Phase One discovery has passed, Defendants must first obtain relief from the District Judge before this court may consider Defendants’ request presented for the first time at the hearing.

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<sup>2</sup> At the hearing, Plaintiff’s counsel, who also represents Mr. Murphy, explained that Mr. Murphy no longer has the complete text messages listed on the privilege log. Mr. Murphy produced what he has, and Plaintiff produced the remainder.

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Defendants improperly request sanctions for the first time in their reply brief. Because this request was not contained in the original noticed motion, Mr. Murphy was not given notice and an opportunity to respond to Defendants’ request for sanctions.

IT IS THEREFORE ORDERED that Defendants’ motion for an order overruling Mr. Murphy’s claim of attorney client privilege on items listed on his privilege log is DENIED AS MOOT.

IT IS FURTHER ORDERED that Defendants’ motion for an order compelling Mr. Murphy to produced further documents during Phase One discovery is DENIED. This order is without prejudice to Defendants’ ability to pursue production of further documents from Mr. Murphy in a later phase of discovery.

IT IS FURTHER ORDERED that Defendants’ request for sanctions is DENIED.

cc: District Judge Wesley L. Hsu

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<b>Initials of Preparer</b>	<u>kl</u>